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THE JUDGMENT AGAINST SHYLOCK IN THE MERCHANT OF VENICE.

THIS subject has already received the attention of jurists. In 1872 von Jhering in his famous lecture "The Struggle for Law"¹ criticised severely the established admiration of the speech of Portia. von Jhering attacked this speech with great vigour and indeed spoke of it as a miserable subterfuge—the rabulous trick of a pettifogger. He finds that through this speech a truly tragic lot befell Shylock; a fate brought about by the usurer's lawful struggle for his rights, and through which the law of Venice was transfigured.

On the other hand, Joseph Kohler has hailed the speech of Portia as the victory of Sarastro over the powers of might,—as the triumph of true law over the caricature of law.² Kohler defended this view with as great emphasis as von Jhering the opposite. And indeed Kohler undertook not only a general philosophic but also a special juristic proof of his conception. He arrived at the conclusion that Portia's decision was right in the result but not in the reasoning.

A French jurist, Prof. Huvelin of Lyon, lately published a spirited lecture entitled "The Case of Shylock." Huvelin holds the speech of Portia to be right as well in its reasoning as in its conclusions.

I must confess that none of these conceptions satisfies me, even though I find correct observations in each of them and especially in that of von Jhering. I am of opinion, differing from Kohler and Huvelin, that the decision in its result is false and think the reasoning pettifoggish and in no way sufficient, for where a right is there is also a way to exercise it. And I think further that the confiscation of property exercised against Shylock and the forcing him to accept Christianity are brutalities which correspond as little to the principles of eternal justice as to the then existent man-made laws. I find therefore true tragedy in Shylock's fate. It is naturally not the tragedy of a heroic personality; it is the tragedy of a man who is made a sacrifice in a typical conflict, a conflict that lies not only in his own person, not only in the dissentient views of his own generation, but also in the discordant nature of all law.

The contract according to which Shylock was entitled to a pound of his debtor's flesh is actually valid and enforceable according to

¹ "Der Kampf ums Recht," translated by J. J. Lalor. Published 2nd Ed., 1914

² "Shakespeare before the Forum of Jurisprudence."

the laws of Venice in force at the time of the action of the play. But the whole world thinks the validity of this agreement should not be taken seriously; Shylock alone has complete faith in the inflexibility of the law, and because of this almost stubborn confidence he puts the Doge and the Senate in a most painful situation.

The highest authority and the whole court of Venice have really no solution of the difficulty.

According to the usage, a Doctor of Laws is commissioned to make the decision. Portia, the woman, in the moment of greatest necessity, appearing like a saving angel, attempts it in all kindness; she places the usurer in a position of utmost wrong; she stretches the conflict to the highest tension by appealing to the graciousness of the enemy and with great emotion she gives him a last warning and offers him an opportunity of renouncing his legal rights. Then as this last attempt to maintain the existing law rebounds against the unwavering hard-heartedness and even more against the thirst for revenge burning within the Jew, as even the knife is sharpened before the eyes of all, and the heart of the royal merchant is laid bare, when every one feels that the terrible calamity dare not and will not happen, Portia seizes upon the saving straw, and making use of a woman's cunning she gains a triumph outshading by her woman's logic all the art of interpretation of the men, as did the women of Weinsberg in saving their husbands.³ She had the courage to bend the law and the cleverness to mask this wrong through a juristic trick for which she received the thankful recognition of the Doge and his learned Senate, the more so because she assumed upon herself the responsibility of this perverted decision.

It is an injustice to the poet, I believe, to accept the theory that he would have the judgment of Portia looked upon as a valid application of the law of Venice. Who can say that Shakespeare himself thought that the decision was juristically correct or that it was in itself satisfactory? Certainly the poet knew that the omission of the bloody scene would be a welcome solution to the audience and that the action of Portia would be looked upon as an agreeable relief. I believe also that the poet expected that the destruction of Shylock's moral existence, wherein the Doge and Portia vied with each other in cruelty, would be accepted with satisfaction by the theatre-going public. But all this is by no means sufficient to lead to the conclusion that Shakespeare considered the medium whereby this solution was reached to be correct in law. And it is altogether

³ (Translator's Note: The general besieging the town allowed the women to come out, but to bring with them only so much as they could carry on their backs. Each woman carried her husband.)

reconcilable with that expectation that he cared nothing about the legal correctness of the judgment, but concerned himself only with the victory of immanent reason and justice. And I also believe that the pettifoggery of the procedure was well known to the sharp-witted man of the world, the shrewd jurist, that Shakespeare was. He did not identify himself in any way with the judgment. We may accept the formula that Shakespeare "always held a mirror before nature and mankind." He pictured criminals and heroes just as they are. He presented the conflicts of life just as they occur. Why should he change his rule only in the case of matters touching law? The acquittal of Wera Sassulitsch by the Russian jury and many other like cases; the activity of Judge Lynch and also the great list of riots and revolutions by which unbearable situations have been changed—all of these are in the same class as the judgment of Portia.

Before I attempt to explain the foundations of this conviction I shall recall briefly the facts in the case between Shylock and Antonio.

Bassanio loved Portia, the much courted mistress of Belmont. Through extravagant habits he lost not only his own fortune, but had already made a large loan from his friend Antonio, who loved him tenderly. Bassanio would now sue for Portia's hand but he lacks the funds to make an appearance suitable to his station in life. For this reason he begs Antonio for a new loan. All of Antonio's money is engaged in his shipping interests. He says:

Thou know'st that all my fortunes are at sea;
Neither have I money nor commodity
To raise a present sum; therefore go forth;
Try what my credit can in Venice do:
That shall be rack'd, even to the uttermost,
To furnish thee to Belmont, to fair Portia.
Go, presently inquire, and so will I,
Where money is; and I no question make,
To have it of my trust, or for my sake.

Bassanio goes to Shylock and requests a loan of 3000 ducats for 3 months with Antonio as surety. Shylock considers it, but says that before agreeing he must first of all speak with Antonio. Shylock knows that Antonio is in business difficulties and that his ability to pay is threatened. He hates the Christian merchant especially because "he lends out money gratis and brings down the rate of usance with us here in Venice," but also because he hates Antonio's holy people and Antonio who has scolded him and treated him like a dog.

Shylock immediately concludes, "If I can catch him once upon the hip, I will feed fat the ancient grudge I bear him." Antonio comes, and explains to Shylock that it is his rule never to give or take money upon interest but that he will break this custom because his friend Bassanio is so much in need. Shylock now explains in the famous dialogue about interest, that he will not take interest if Antonio will bind himself to pay a penalty of a pound of flesh in case the money is not punctually repaid.

The agreement arose in this way. Antonio asks:

- Well, Shylock shall we be beholding to you?
Shy. Signior Antonio, many a time and oft
In the Rialto you have rated me
About my moneys and my usances:
Still have I borne it with a patient shrug;
For sufferance is the badge of all our tribe,
You call me misbeliever, cut-throat dog,
And spit upon my Jewish gaberdine,
And all for use of that which is mine own.
Well then, it now appears you need my help:
Go to, then; you come to me, and you say
'Shylock, we would have moneys': you say so;
You that did void your rheum upon my beard,
And foot me as you spurn a stranger cur
Over your threshold: moneys is your suit.
What should I say to you? Should I not say
'Hath a dog money? Is it possible
A cur can lend three thousand ducats? or
Shall I bend low and in a bondsman's key,
With bated breath and whispering humbleness,
Say this,—
'Fair sir, you spit on me on Wednesday last;
You spurned me such a day; another time
You called me dog; and for these courtesies
I'll lend you thus much monies'?
- Ant.* I am as like to call thee so again,
To spit on thee again, to spurn thee too.
If thou wilt lend this money lend it not
As to thy friends; for when did friendship take
A breed for barren metal of his friend?
But lend it rather to thine enemy;
Who if he break, thou mayst with better face
Exact the penalty.

Shy. Why, look you, how you storm!
I would be friends with you, and have your love,
Forget the shames that you have stained me with,
Supply your present wants, and take no doit
Of usance for my moneys, and you'll not hear me:
This is kind I offer.

Bass. This were kindness.

Shy. This kindness will I show.
Go with me to a notary, seal me there
Your single bond;⁴ and, in a merry sport,
If you repay me not on such a day,
In such a place, such sum or sums as are
Express'd in the condition, let the forfeit
Be nominated for an equal pound
Of your fair flesh, to be cut off and taken
In what part of your body pleaseth me.

Ant. Content, i' faith: I'll seal to such a bond
And say there is much kindness in the Jew.

Bass. You shall not seal to such a bond for me:
I'll rather dwell in my necessity.

Ant. Why, fear not, man; I will not forfeit it;
Within these two months, that's a month before
This bond expires, I do expect return,
Of thrice three times the value of this bond.

Shy. O father Abram, what these Christians are,
Whose own hard dealings teaches them suspect
The thoughts of others! Pray you, tell me this;
If he should break his day, what should I gain
By the exaction of the forfeiture?
A pound of man's flesh taken from a man
Is not so estimable, profitable neither,
As flesh of muttons, beefs or goats. I say,
To buy this favour, I extend this friendship:
If he will take it, so; if not, adieu;
And, for my love, I pray you wrong me not.

Ant. Yes, Shylock, I will seal unto this bond.

Shy. Then, meet me forthwith at the notary's;
Give him direction for this merry bond;

Some have thought that Shylock demanded the contract as 'merry sport' and in speaking of the 'merry bond' he shows that the whole

⁴ Sir Frederick Pollock points out that this is a bond without a penalty. L. Q. R. Apr. 1914.

thing was intended only as a joke and without any legal purpose or effect. But that view cannot be supported. Shylock reconciles himself to his refusal of interest only by the penalty of the pound of flesh. This is his equivalent. He bought it with the interest from which he released the merchant. In the court scene he says: "The pound of flesh, which I demand of him, Is dearly bought; 'tis mine and I will have it." In the presence of his friend Tubal he had taken an oath that he had rather have the pound of Antonio's flesh than twenty times the amount of the indebtedness. And all the other participants are in perfect agreement that the penalty was inserted in perfect seriousness. It was from the very beginning considered a terrible exaction. When the three months had passed and Antonio could not pay he was brought to court and given into the power of his creditor who required only the final judgment to carry his right into effect. We see Antonio softened to such a degree that he begs for mercy. The Doge himself and all the Senators implore the Jew to be merciful. This would all be nonsense if the contract had not been considered valid and capable of execution. And Portia herself says the contract is valid, after she had implored the Jew to mercy.

"I have spoke thus much
To mitigate the justice of thy plea;
Which if thou follow, this strict court of Venice
Must needs give sentence 'gainst the merchant there."

Portia utters this judgment in the following words: (turning to Antonio)

"You must prepare your bosom for his knife
For the intent and purpose of the law
Hath full relation to the penalty,
Which here appeareth due upon the bond."

Turning to Shylock,

"A pound of that same merchant's flesh is thine:
The court awards it and the law doth give it."

And now follows the climax of the scene.

Shylock (lifting the scales)

Most learned judge! A sentence! Come, prepare!

Por. Tarry a little; there is something else.

This bond doth give thee here no jot of blood;
The words expressly are a 'pound of flesh':
Take then thy bond, take thou thy pound of flesh;

But, in the cutting it, if thou dost shed
 One drop of Christian blood, thy lands and goods
 Are, by the laws of Venice, confiscate
 Unto the state of Venice.

It should be noticed that Portia did not first in her judgment recognize the claim of Shylock and then deny it the execution. It is a case of an individual judgment that carries with it a condition. Shylock interrupted Portia by lifting up the scales. Portia answers him: "Tarry a little," and then she continues, introducing a condition into the judgment, namely, that no blood is to be spilt.

With that the judgment is pronounced and the civil case of Shylock v. Antonio ended.

What now follows is a criminal case against Shylock. After pronouncing the entire judgment, Portia says once again,

"Therefore prepare thee to cut off the flesh."

But Portia indicates again the consequences of the drawing of blood: death and the confiscation of property.

Shylock now, after a further attempt to save his capital, withdraws his claim to the exaction of the penalty and will go with these words:—

"I'll stay no longer question."

But Portia will not allow him to go; she explains to him instead that although he has avoided the charge of having drawn blood, he has already laid himself open to another charge. He has already committed a crime which the law of Venice punishes with death and loss of property.

It is enacted in the laws of Venice
 If it be proved against an alien
 That by direct or indirect attempts
 He seeks the life of any citizen,
 The party 'gainst the which he doth contrive
 Shall seize one-half his goods; the other half
 Comes to the privy coffer of the state;
 And the offender's life lies in the mercy
 Of the Duke only, 'gainst all other voice."

The Doge then declares:

That thou shalt see the difference of our spirits,
 I pardon thee thy life before thou ask it:
 For half thy wealth, it is Antonio's;
 The other half comes to the general state,
 Which humbleness may drive into a fine.

Then it occurs to Portia, "Aye, for the state, not for Antonio," whereupon Antonio makes the following suggestion: For himself he will take only a life interest in his half of Shylock's property and the capital shall be left to the man who lately stole away the Jew's daughter, Jessica, if the following conditions are accepted by the Doge and Shylock.

The State of Venice leaves to Shylock its half of his property, *i. e.*, it does not exercise its right of confiscation. On the other hand Shylock for this acknowledges Christianity and because the state has pardoned him, he gives this property to his son-in-law and daughter.

The Doge accepts this suggestion and with this surprising sentence:

He shall do this, or else I shall recant
The pardon that I late pronounced here.

So the arrangement suggested by Antonio is forced upon the Jew by the Doge's misuse of the power of his office and Portia also takes part in this unreasonable demand in pressing herself upon Shylock with: "Art thou contented Jew? What dost thou say?" Shylock says, "I am content."

With that the criminal case is ended by an agreement which the government has forced upon the accused.

It cannot be disputed that the whole course of this criminal proceeding is, according to any standard, illegal, unjust and immoral.

While the course of the criminal case can only be termed a mis-carriage of the law, judgment upon the preceding civil case is much debated and full of doubt.

If one would form a judgment upon this matter he must first of all state the question properly.

It depends upon this: according to what standard is this question of law to be judged? According to the law in force in Germany at the present time? or according to the law of England of the time Shakespeare wrote the play—1594? or lastly according to the law of Venice of the time of the action?

Judged according to the German law of today the matter is very simple. The penalty of a pound of flesh would be invalid as *contra bonos mores*.⁵ But if one would regard the contract itself as valid it must be replied that the carrying out of the rights of Shylock would be out of the question on account of the so-called chicane paragraph which forbids the exercise of a right whose only purpose is the injury of another.

⁵ § 138, "Bürgerliches Gesetzbuch" of the German Empire.

But considering the question from the standpoint of the English law of the 16th century, the solution is not so easily found. The legal foundations for this standard are not without some degree of doubt. But the following may be laid down as beyond question: Shylock's case would have been in Shakespeare's time to a certain extent allowable. It is well known that English law up until very late times held fast to a literal interpretation and a formalism of which we can scarcely form any conception. And then also that the courts did not have the courage nor the right to interpret bonds other than according to their strict wording.

An example of this:

It was for many centuries in England (as also in Rome) the custom to confirm a debtor's promise by agreeing upon an enormous penalty, and this was indeed done in such a way that the penalty appeared as the real debt and the principal sum as a secondary thing. He who engages himself to pay 3,000 ducats at a certain time and upon failure thereof to pay a penalty of 10,000 ducats expressed himself in this way: "I am indebted to you for 10,000 ducats. I am not indebted to you if I, at such and such a time, pay you 3,000 ducats." Such bonds were treated with great strictness by the courts so that no manner of excuse allowed a delay to follow, nor had the judge (as he does in German Civil law) the right to moderate the amount of an excessive penalty.

It was not until the 18th century that, under Queen Anne, a law was passed whereby it was allowed a debtor to escape the payment of a conventional penalty by paying in the stead thereof the interest and costs. It is true that even before this law many debtors had secured a like release but only through a sort of an act of grace, namely through the judgment of an equity court. The worst outgrowths of this formalistic legal practice had already as early as the 13th century been somewhat modified by the Lord Chancellor who in the Curia Regis, while sitting in certain cases as an ordinary court pushed to one side the formal rules of the Common Law and judged according to principles of equity. Out of this jurisdiction of the Lord Chancellor and the Curia Regis developed the Equity courts which until 1873 stood side by side with the courts of Common Law. It is only then within the last forty years that all English courts have been competent to apply legal rules that are also consonant with reason.

This much then one may well say: that Shakespeare's theatre public without giving the matter juristic consideration, would have looked upon the binding force of the flesh clause of the contract as well as the literally interpreted jurisprudence of Portia as in accord-

ance with the Common Law. In those times one had become accustomed to the strangest consequences of the exercise of rules of law and had become hardened to such legal monstrosities.

But in spite of this the Shylock case cannot stand according to the rules of English Law of the 16th century. For the following reasons: No English Court of Common Law could enforce anything but the payment of money, that is, debts and damages. Only the Chancery court, that is, the Equity court of the Lord Chancellor could pass judgment for any execution save for a certain sum of money. The pound of flesh could have been adjudged to Shylock only by the Lord Chancellor and since the Lord Chancellor is the very representative of equity it would have been a contradiction to have recognized Shylock's claim.

But on the other hand the case of Shylock as created would find its decision not through the Common Law courts but through the Equity courts. Without any doubt whatever, this case, arising in the time of Shakespeare would have been laid before the Lord Chancellor and by him so decided as the rules of equity and the dictates of good conscience directed, that is, it would have resulted in the same decision as that which Portia announced but certainly without her quibbling argumentation, but in its stead a free discussion of the immorality both of the contract and the execution prayed for, in other words, as natural justice requires. Thus the whole legal conflict would have been impossible according to English law. Had Shakespeare transferred the scenery to London he would have offered to his public an evident contradiction and he could not have wished to bring upon the stage a purely English arrangement in a Venetian situation because in the legal situation itself there would have been no agreement.

One cannot long hold the opinion that the entrance of the Doctor of Padua into the case had the same significance as a court of equity as Portia remained throughout the exponent of the very strictest literal interpretation.

No: Shakespeare kept the whole action so far removed, both locally and nationally, from his theatre public that only two standards by which the legal problem may be judged enter into the question: either the special law of Venice or those general conceptions of justice which make up the law of nature. In this alternative it is not difficult to judge, for the whole foundation of the piece is purely Venetian. Thus the standard of the law of nature must be withdrawn or at least modified until it plays only the role which is universally assigned to it, that is, as the expression of legislative criticism. We are thus forced to turn, for our legal judgment, to

the laws of Venice, by which, of course, is meant the law of Venice as it is presented in this drama. We shall not succumb to the foolish temptation of directing our examination of the subject upon the question, whether or not Shakespeare has really given us the historically valid law of Venice. In every essential respect he has done that.

What we have taken most pains with is to establish the validity of the contract so far as it touches the forfeiture of a pound of flesh.

Such agreements are not only to be found in the early middle ages but in the 13th, 14th, and 15th centuries in Germany, Scandinavia and Italy and have been recognized as legally valid.

Of the original documents at hand I shall cite only three examples.

In the city archives of Genoa is to be found a document from the year 1279 recording a matter which came before the notary Pietro Bargone. Here is recorded an agreement between a Sicilian girl Cerasia and a certain Jacobus, by which the former was bound to serve her master in all his commands and the latter to give her lodging and food in addition to certain money payments, and it was made upon this condition: that if she failed to do any of the services of Jacobus or disregarded any of his commands then Jacobus had the right to cut off her nose, or a hand or a foot, and it was agreed that having thus penalized his servant he should not be made amenable before a court of law.

In a Cologne record of a case arising in 1263 before a court and jury a debtor promised that if he failed to carry out his part of the contract he should allow himself to be beheaded.

And in a Silesian document of 1250 a Konrad Blind subjected himself before the magistrates to the penalty of death if he committed certain acts against the church. The magistrates were then empowered to demand the forfeiture of his life.

But nothing speaks more convincingly for the earnestness and the frequency of such contracts than the fact that in a great number of legal authorities of the Middle Ages it is forbidden to game away one's eye, nose, ear, hand or foot, a custom which Tacitus reported to be common among the Germans.

In short, Shylock's contract was possible and, according to the law of that time, valid.

In this connection one thing is noteworthy: at no time and in no place has it been recorded that a creditor has taken advantage of his right to the mutilation or the death of his debtor. And it was the same according to the Roman law: The 12 Tables (at least ac-

cording to a very widely extended interpretation) gave to several creditors, if they agreed, the right to take the life of the debtor; "*Partes secanto, se plus minusve secuerint se fraude esto.*" But it is reported that no use has ever been made of this right.

And it is just in this that I see the key to the dramatic reproach in Shakespeare's play.

I believe Shakespeare was guided by the question: What will come of it, if in such a juristic situation the creditor does lay his hand upon the debtor?

How near this problem lays to the horizon of the Shakespearian time may be seen from an occurrence reported by Gregorio Leti, in his Biography of Pope Sixtus V, as having taken place in 1587—that is, only a few years before the Merchant of Venice was written.

There it is said: (I quote from an old German translation) "The newspaper had come to Rome, in which it was announced that the English Admiral Franciscus Draak had attacked and plundered the city of San Dominico in the island of Hispaniola and had made booty of everything there. This together with other singular matters was written to Master Paulo Maria Secchio, a wealthy and good looking merchant in Rome. Now, because he had dealings in that city his interests were thereby affected and a certain Jew Simson Ceneda was for the same reason also interested in this matter, so he had the Jew called to him and told him what news he had received in the post. The Jew, not a little concerned that the news might perhaps have been false, commenced to maintain the opposite of what had been told to him and either because he allowed his own goods to have too much effect over him or as a matter of fact he had no faith in this rumor or perhaps also because he wished to remain stubbornly by what he had said, he at last addressed these words to the Gentile: "I will wager a pound of my body's flesh that this thing is not true," which manner of wager, whose only purpose is to discover the truth, only those enter into who are right stubborn in their opinions; as for example, they say, 'I will wager my head, I will bet a hand,' and so on.

Secchi who was not a little proud and peculiar straightway answered with this proposition: 'And I will place against your pound of flesh a thousand scudi that this thing is true.' The Jew none the less remaining by his words, so stubborn and arrogant was he, offered for a moment his hand, and said: "If it please the Lord, we shall arrange this thing by a writing." Then Secchi without any further ado prepared in the presence of two witnesses a paper with these contents: If the newspaper should be false in saying that Draak at such and such a time had taken the city of San Dominico

in the island of Hispanolia Master Paulus Maria Secchi shall be bound to pay to the Jew Simon Ceneda a thousand scudi in good coins of gold. But if, on the other hand the news should be true then shall the aforesaid Secchi have the right with his own hand and with his well sharpened knife to cut a pound of flesh out of the body of the aforementioned Jew and from that part of his body as it pleases him to select.' This matter was written right orderly and was witnessed by two witnesses, the one a Christian, the other a Jew, but on both sides merchants of fair means and to each party a copy thereof was given.

To the great misfortune of the Hebrew there came after three months the certain and unfailing news of the capture and plundering of this city. Secchi then pressed with all his energy for the fulfillment of the compact that had been agreed to, and would not hear to it but that the promised pound of flesh should be cut from that part of the body, mention of which proper modesty forbids, but which the reader will be able without much pains to guess. The anxious Jew offered instead to give a thousand scudi with which sum he would have had to be satisfied in case he had won. Secchi would by no means consider any other fulfillment than that which his pledge awarded him. And now because the poor devil knew of no other help he ran to the Governor and begged that he should use his high authority to compel Secchi to accept the thousand scudi. The Governor, however, knowing how eager the Pope was to pronounce judgment in such cases, laid the whole matter before him and requested that with his own judgment he should settle the dispute. Sixtus had the Christian and the Jew called before him, read the written obligation, and after they themselves had for some time laid their cases before him, he explained his opinion in the following words: It is no more than just that he who involves himself in a bet should render unto the other what he has agreed to and so in your case we shall see that the wager is carried out in every particular. So seek out your knife and cut here in our presence a pound of flesh out of whatever part of the body of the Jew it may please you to choose. Only this: do you also have a care for this: that if you cut the least bit too little or too much you shall be hanged without mercy. Let the knife then be sharpened and bring a correct scales to me, that we may immediately get at this business.

When the poor merchant Secchi heard this judgment he fell to such a quivering as though he had suffered an attack of the four-day fever. His eyes full of tears he kissed the earth at the Pope's feet and by his conduct gave one to understand that he would never again undertake so bold a deed. When the Pope asked him what

more he wanted he answered, weeping, "I am content Holy Father and do not ask for more than your benediction, and that the written memorandum be torn to pieces. Hereupon the Pope turned to the Jew, and said: "But what say you? Are you likewise content?" The unfortunate Jew who looked upon himself however as most fortunate when he heard this so good a pronouncement of the Pope, well knowing that it would be impossible to cut so exact a piece of his flesh, gave this answer, "Perfectly content, Holy Father." The Pope alone had more to say: "We are however by no means content; the Governor as the representative of Justice also not. And what sort of law was it that taught you to enter into this manner of wager? The underthanes of the Princes or to speak more clearly, the men of the whole world have only a right to the use of their bodies: they can sell neither part nor parcel of them, unless it is expressly allowed by the over-lord.

After this they were both led into prison and the Pope ordered the Governor, at the same time, to deal with them most sharply so that reflection upon their example might induce others not to enter into such vexatious wagers. The Governor said that they certainly deserved a penalty of a thousand scudi each. And the Pope continued: And you think this is enough? You think that a subject shall in this way be free who would dispose of his life according to his own whim. Hasn't the Jew in giving Secchi the right to cut a pound of flesh from his body put himself under an apparent danger of death? And is not this the same as becoming a self-murderer? And has not Secchi committed a voluntary criminal assault, in this, that he first of all accepted the bet to cut a pound of flesh out of the Jew, then concluded the bet and finally wished even to have it fulfilled? That the Jew must needs have died from this cut does not require greatly extended proofs; for one needs only to consider the nature of that part of the body where the other had contemplated performing his rights under the wager. Shall not then these two wanton murderers make penance to our government with a payment of money?

To this the Governor answered: "The merchant protests most mightily that it had never come into his thoughts to carry his claims to a conclusion, but that he was only of a mind to put the Jew to shame and to heartily frighten him. And the Jew maintains at the same time that he would never have entered into such an arrangement had he not thought that it would never come to fulfillment." Sixtus did not allow the Governor to finish, but commenced: "But how can we believe such assurances which are first made in our presence and in the presence of the judge and which are only extorted

from them by the fear of justice. Let them both be led to the gallows and sentenced to death. Afterward we shall order what more shall be done to them.

Both were thus condemned to death and the judgment made public in the usual way. Although no man ventured to declare this sentence inequitable yet many there were who were greatly disturbed because of it: for Secchi had aristocratic and wealthy relatives and the Jew was one of the foremost of their synagogue, and in this way it came about that from both sides many memorials and petitions came pouring in upon Cardinal Montalto, begging that life at least be spared to these two. Now the Pope had at no time intended to carry out his sentences but only to frighten the others, the more so that in the future they would learn to be more ware in such cases and so he allowed his mind to be changed and spared their lives but sent them to the gallows. He allowed also that this latter penalty should be foregone if each would buy his freedom with 2,000 scudi and the money given to the newly commenced building of the Hospital di Ponti Sisto. But this money may not be paid until the chains have first been fastened to their feet. In such a way they secured their freedom, and this was the first time that Sixtus mitigated a penalty once pronounced or showed mercy to criminals.

Let one imagine that Shakespeare had vanished from England between the years 1585-1590 and that he also during this time was in Italy, then can one safely conclude that this whole story had come to his notice.

It must be noted: Shakespeare did not get the story from Letis' book, for that was first published in 1630, but as we have said, it is highly probable that Shakespeare had heard the story himself in Italy where these events like a series of other famous judgments of Pope Sixtus had undoubtedly aroused attention and were talked about on all sides. This Sixtine story stands probably in a psychological relationship to an old legend. In old Buddhist tales is to be found the story of a man who borrows money from a merchant and makes over to him a pound of flesh as security. This story occurs again and again in the Sages of the Asiatics. In Europe, in the books of stories and legends known as the *Gesta Romanorum*, which had appeared in England in the 13th or 14th centuries, the same matter is to be found in such a form as to exhibit the most striking resemblance to the Shakespearian drama.

It is there told: A knight sought in marriage the daughter of King Lucius. To accomplish this a thousand marks was necessary. He begged a merchant to lend him this sum. Then the story goes

on: The merchant would not agree to lend the money excepting alone upon this condition: that if within three days he could not return the thousand marks he should then allow the merchant to cut a considerable piece of flesh from his body, from whatsoever part he chose, and that he should furnish a writing containing this agreement, and that it should be penned in his own blood. This pledge and solemn promise the knight gave and also the writing as it was required of him. Thereupon the merchant gave him the money and he went with it to the court and offered himself to the virgin daughter of the king. The virgin kept him a whole week with her in her chamber, without that anyone had become aware of it. But in the midst of all his joy he had forgot his vow to the merchant and as he thought of it, he commenced to weep with great lamentation. Then the young lady asked him what his trouble was and what had thus suddenly happened to him. Then he told her how he had bound himself to the merchant and how the day of grace had now passed. The lady comforted him and said: Go to him and offer him the money and if he will not take it, ask him what it is he will have from you and come again to me that I may give it to you. So the knight agreed and went to the merchant and begged him to take the money, but unfortunately he would not hear to it, and said he would hold him to his agreement and led him straightway before the judge. But now it was a rule of law that he who had voluntarily bound himself to another must carry out his agreement. The lady had however sent out messengers to see how it went with him. They come back and told her he was a prisoner before the court. She received a great fright, and quickly put on men's clothes, jumped upon a horse and rode to the court where she was by everyone taken to be a knight. Then she went to the merchant and asked him whether he would take the money and have done with his anger against the knight. But the merchant would not hear to that, and when she perceived she could do nothing with him, she said, "Good, since the knight has thus bound himself he shall make good his promise. Now you well know that it is a rule of law that whoso spilleth the blood of another his blood shall also be spilt. When the merchant perceived that he would gladly have taken the money. But the lady then said: "No, that cannot now be, because you would not before take the money," and called the judges that they might say what the law was. They all decided that the merchant might cut his piece of flesh, but would dare shed no blood, and that therefore the knight must be freed. When she heard that she thanked the judges, rode again to her court, took

off her man's costume and dressed again in her own clothes, as though she had not been away."

Still more close is the resemblance between the Shakespearian material and an Italian story of Giovanni Fiorentino, in the series 'Il Pecorone,' which was written in 1378 and first printed in 1558. This story is undoubtedly a continuation of the story of the 'Gesta Romanorum.'

The money lender is here a Jew and is given only the name, 'the Jew.' He lives in Mestri near Venice. The scene of the action is Venice. The young lady lives in Belmonte. Her suitor, who is not called Bassanio, but Gianetto, does not himself borrow the money but it is done for him by his friend, not Antonio—but Ansaldo.

I need not examine the other sources from which Shakespeare may have 'created.'

For the question which interests us here, these things have not the significance of sources. We are much more of opinion that Rückert's words are here applicable:

"A rose lay in the dew
Into grey pearls it grew
As the sun upon them shone
Into rubies had they grown."

The sun of Shakespearian art has ennobled these stories. His genius has gathered together as in a reflector the eternal problems of life—here the phenomena of legal conflicts. How right becomes wrong and wrong becomes right, as in the eternal conflicts between the Ideal and the Real—how through exaggeration, arrogance and breach of law that one is crushed who believed in the inflexibility of the law;—all this is reflected in the tragic fate of Shylock.

Kiel.

TH. NIEMEYER.

EDITOR'S NOTE.—The foregoing article by Prof. Dr. Th. Niemeyer, of the University of Kiel, Privy Counsellor, President of the German Branch of the International Law Association, was translated by Wandell Herbruck (LL.B. Michigan).